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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

* * *

PRESENT: HON. AMALYA L. KEARSE,
HON. GUIDO CALABRESI,
HON. ROBERT A. KATZMANN,
Circuit Judges.

No. 03-7561
[Filed and Entered February 9, 2004]

MGM PRODUCTIONS GROUP, INC.,

Petitioner-Appellee,

v.

AEROFLOT RUSSIAN AIRLINES,

Respondent-Appellant.

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* * *

Appeal from the United States District Court for the Southern District of New York (Berman, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court is AFFIRMED.

Petitioner-Appellee MGM Productions Group, Inc. ("MGM"), a California corporation, is the assignee of a No-

vember 29, 2002 award ("Award") of over $13 million plus interest and costs, obtained by Russo International Venture ("Russo"), a New York corporation, against Aeroflot Russian Airlines ("Aeroflot"), in an arbitration held in Stockholm, Sweden, pursuant to a 1992 agreement ("Agreement") between Russo and Aeroflot. The Award compensated Russo for Aeroflot's breach of the Agreement, under which Russo provided consulting services to Aeroflot in connection with the Russian airline's leasing of airplanes and other equipment to Iran Air.

MGM filed suit in federal district court, seeking confirmation of the arbitral award, pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, open for signature, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38 ("New York Convention").

Aeroflot opposed confirmation, arguing that the Award fell under the "public policy exception" in Article V(2)(b) of the New York Convention, because it compensated Russo for Aeroflot's non-performance of an Agreement whose provisions allegedly violated the Iranian Transactions Regulations ("ITRs"), 31 C.F.R. § 560.101 *et seq.*, adopted by the Office of Foreign Assets Control of the Department of the Treasury pursuant to Executive Orders issued by the President of the United States under the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1706. The district court confirmed the Award, and we affirm.

The arbitrators considered Aeroflot's argument that the Agreement violated the ITRs promulgated in 1995, and found that since the Agreement provided only for transactions between Russo and Aeroflot, it did not contravene the regulations. We accord great deference to the arbitrator's factual findings and contractual construction. *See Europcar Italia, S.p.A. v. Maiellano Tours, Inc.*, 156 F.3d 310, 316 (2d

Cir. 1998) ("[A]n arbitration award cannot be avoided solely on the ground that the arbitrator may have made an error of law or fact."). Even if, in these circumstances, we did not, it would be, at most, doubtful that the Agreement violated the 1995 ITRs. And, as such, the Agreement cannot be said to violate fundamental public policy. *See Parsons & Whittemore Overseas Co. v. Societé Generale de L'Industrie du Papier (RAKTA)*, 508 F.2d 969, 973-74 (2d Cir. 1974).

Aeroflot also argues that performance of the Agreement after August 20, 1997, the date that amended ITRs went into effect, would have been illegal, and that MGM should not be compensated for breach of the Agreement when its performance by MGM's predecessor in interest would have violated U.S. public policy. We need not reach this question, however, since Aeroflot breached the Agreement before the 1997 ITRs went into effect. We cannot know, therefore, whether the parties would subsequently have amended their Agreement to avoid potential violations of the regulations, were it not for Aeroflot's breach. Under these circumstances, Aeroflot cannot now sustain an argument that enforcement of the Agreement would violate U.S. public policy.

We have considered all of the Appellant's arguments, and found them to be without merit. Accordingly, we AFFIRM the judgment of the district court.

For the Court,

ROSEANN B. MACKECHNIE,
Clerk of Court

By: s/ Lucille Carr

[Court's notice regarding citation of unpublished opinions and identification of counsel omitted in printing.]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

03 Civ. 0500 (RMB)
[Filed May 14, 2003, Entered May 16, 2004]

MGM PRODUCTIONS GROUP, INC.,

Petitioner,

— against —

AEROFLOT RUSSIAN AIRLINES,

Respondent.

DECISION AND ORDER

I. Introduction

Petitioner MGM Productions Group, Inc. ("MGM") is the assignee of a November 29, 2002 arbitral award obtained by Russo International Ventures, Inc. ("Russo"), a New York corporation, against Aeroflot Russian Airlines ("Aeroflot"), a Russian joint stock company, in an arbitration held in Sweden at the Arbitration Institute of the Stockholm Chamber of Commerce ("Award").[1] MGM asks this Court to confirm the Award, in the amount of $13,155,000.00 plus interest and costs, pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, 21 U.S.T. 2517 ("Convention"), which was ratified by the United States in 1970 and codified at 9 U.S.C. §§ 201-08.

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[1] All references to "Russo" are to Russo International Venture, Inc. and Russo International Management, Inc. All references to "Aeroflot" are to Aeroflot Russian Airlines and its predecessors.

Aeroflot opposes confirmation and argues the Award is a violation of public policy because "enforcement of the award in the United States would reward [Petitioner] for violations of U.S. law." Aeroflot moves for a stay of the proceeding pending the outcome of an appeal of the Award in Sweden. **For the reasons set forth below, the Court grants Petitioner's motion to confirm the Award. The Court denies Respondent's motion to stay the proceeding.**

II. Background

In June 1992, Russo contracted with Aeroflot to provide consulting services "for the leasing of any commercial aircraft, (excluding helicopters), commercial aircraft parts, along with related service, support and spare parts contracts to Iran Air" in exchange for commissions ("Agreement"). (Agreement Preamble.) The Agreement provided for arbitration of disputes arising under the Agreement in Stockholm, Sweden under the laws of New York State and Russia. (Agreement ¶¶ 14-15.)

Between January 22, 1993 and August 19, 1996, Russo provided consulting services under the Agreement and Aeroflot made payments totaling $1,822,207.42. (Award at 39, 49.) On October 27, 1998, after a disagreement arose concerning Russo's right to certain commissions, Russo initiated an arbitration. (*See id.*) "Russo alleged that Aeroflot had breached the Consultation Agreement by withholding commissions due to Russo." (*Id.*) In response, Aeroflot argued, among other things, that it need not pay any commissions because U.S. executive orders relating to transactions with Iran and U.S. regulations implementing those orders nullified the Agreement. (*See id.* at 40 ("[T]he Consultation Agreement is null and void since it has been executed in violation of the U.S. embargo on Iranian Transactions....").) For example, Aeroflot argued that U.S. Executive Orders 12,613

("Prohibiting Imports from Iran"), 12,957 ("Prohibiting Certain Transactions With Respect to the Development of Iranian Petroleum Resources"), and 12,959 ("Prohibiting Certain Transactions With Respect to Iran"), and several regulations promulgated by the Office of Foreign Assets Control of the United States Department of the Treasury implementing those Executive Orders, 31 C.F.R. §§ 560.206 ("Prohibited trade-related transactions with Iran; goods, technology, or services"), 560.410 ("Exportation, reexportation, sale or supply of services"), and 560.515 ("30-day delayed effective date for pre-May 7, 1995 trade contracts involving Iran") (collectively "Executive Orders and OFAC Regulations"), prohibit the provision of services by Russo contemplated in the Agreement. (Award at 41.)

On November 29, 2002, the arbitration panel issued a thorough eighty-one page written Award which upheld the Agreement and directed Aeroflot to pay Russo $13,155,000.00 plus interest and costs for Aeroflot's breach of the Agreement. (Award at 80.) "Russo has ... in fact provided services under the Consultation Agreement to such an extent that its duties were fulfilled." (Award at 49.) "[T]he tribunal finds that Aeroflot shall reasonably be awarded ... compensation for unpaid commissions." (Award at 70.) "[T]he transactions in which Russo was engaged can not be regarded as related to goods or services originated in Iran or owned or controlled by the Iranian Government" and, consequently, did not violate the Executive Orders and OFAC Regulations. (Award at 42-43.)

Russo transferred its interest in the Award to MGM, effective January 9, 2003 (Saroudi Decl. Ex. A).[2] MGM filed

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[2] Aeroflot argues that MGM does not have standing to bring this proceeding because Craig Saroudi (the sole owner of Russo and MGM), not

(footnote continued)

this action on January 23, 2003.[3] MGM claims that all necessary grounds exist for this Court to confirm the Award. (Pet'r Br. at 4 ("An arbitral award is sufficiently final for confirmation purposes provided that no further recourse may be had to the appeals division of the arbitral tribunal.... [T]he mere fact that recourse may somehow be had in another court of law does not prevent the Award from being 'binding.'" (citations omitted)).) Aeroflot contends that United States public policy, namely the United States's prohibition against certain transactions with Iran, bars confirmation of the Award. (Resp. Br. at 5-6 ("Because the arbitrators' award seeks to compensate Russo for acts that violate laws forbidding Americans from engaging in transactions relating to Iran, and to impose liability on Aeroflot for not enabling Russo to engage in further illegal acts, the award is contrary to U.S. public policy.") Aeroflot cites the same Executive Orders and OFAC Regulations cited by the Swedish arbitral panel, as

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(footnote continued)
Russo, assigned Russo's award to MGM on January 9, 2003. (*See* Decl. of Fred. G. Bennett Ex. H.) In response, MGM submitted a new "Assignment of Assets," dated March 21, 2003. The "Assignment of Assets" states that the assignment is "effective as of January 9, 2003," and that Russo assigned to MGM: "One hundred percent of the interest of Russo International Ventures, Inc. in the Award, dated November 29, 2002, in the case of Russo International Ventures, Inc. v. Aeroflot Russian Airlines, case number 091/1998." (Decl. of Craig Saroudi Ex. A.)

[3] On February 14, 2003, Aeroflot initiated an appeal in the Svea Hovrätt (Court of Appeal) in Sweden to annul the Award, claiming that "the arbitrators erred by (1) applying the conflict-of-laws standards of the jurisdictions chosen by the parties, rather than their substantive laws as required, (2) failing to consider and address Aeroflot's objection that it owes no money to Russo under applicable law because it did not accept Russo's services in writing, and (3) failing to take into account Article 782 of the Russian Civil Code of 1994." (Resp. Br. at 4.)

well as Executive Order 13,059 ("Prohibiting Certain Transactions With Respect to Iran"), 31 C.F.R. §§ 560.204 ("Prohibited exportation, reexportation, sale or supply of goods, technology, or services to Iran"), 560.208 ("Prohibited facilitation by United States persons of transactions by foreign persons"), and 560.701 ("Penalties").[4] Rather than confirm the award, Aeroflot asks the Court to stay this proceeding pending a decision in the Svea Hovrätt (Court of Appeal) in Sweden.

III. Standard of Review

"The confirmation of an arbitration award is characterized as a summary proceeding that merely makes what is already a final arbitration award a judgment of the court." *Sarhank Group v. Oracle Corp.*, 01 Civ. 1285, 2002 WL 31268635, at *3 (S.D.N.Y. Oct.9, 2002). "Accordingly, 'the showing required to avoid summary confirmance is high.'" Id. at *4 (quoting *Ottley v. Schwartzberg*, 819 F.2d 373, 376 (2d Cir.1987)); *see also Pike v. Freeman*, 266 F.3d 78, 89 (2d Cir.2001) (noting the "strong federal policy favoring arbitration, the enforcement of arbitration agreements and the confirmation of arbitration awards").

In enforcement proceedings under the Convention, a court may consider only the specific defenses listed in Article V as grounds for refusing to enforce an award.[5] *Europcar*

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[4] For the remainder of this Order, references to "Executive Orders and OFAC Regulations" include the U.S. executive orders and regulations cited by the Swedish Arbitral panel as well as those Aeroflot raised in this Court.

[5] Article V of the Convention sets forth seven bases to refuse to enforce an arbitral award. In the present action, Aeroflot advances only one of these, i.e., the so-called public policy defense to enforcement. Article V section (2)(b) states in relevant part: "2. Recognition and enforcement

(footnote continued)

Italia, S.p.A. v. Maillano Tours, Inc., 156 F.3d 310, 313 (2d Cir.1998); *Henry v. Murphy*, M-82, 2002 WL 24307, at * 3 (S.D.N.Y. Jan.8, 2002) (citing *Yusef Ahmed Alghanim & Sons v. Toys 'R' Us, Inc.*, 126 F.3d 15, 20 (2d Cir.1997)); *see also* 9 U.S.C. § 207 ("The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention."); *Trans Chem. Ltd. v. China Nat'l Mach. Import & Export Corp.*, 978 F. Supp. 266, 309 (S.D.Tex.1997) ("[T]he court must confirm the award unless [the party opposing confirmation] alleges and proves one of the reasons for denying enforcement provided in Article V of the Convention.").

Courts construe the public policy limitation in the Convention very narrowly and apply it only where enforcement would violate the forum state's "most basic notions of morality and justice." *Europcar Italia*, 156 F.3d at 313; *Waterside Ocean Navigation Co. v. Int'l Navigation Ltd.*, 737 F.2d 150, 152 (2d Cir.1984); *Trans Chem. Ltd.*, 978 F. Supp. at 310 n. 193 (citing *Fotochrome, Inc. v. Copal Co.*, 517 F.2d 512, 516 (2d Cir.1975)); *Geotech Lizenz AG v. Evergreen Sys., Inc.*, 697 F. Supp. 1248, 1254 (E.D.N.Y.1988). "When construing this section, the Court of Appeals for the Second Circuit has noted the 'pro-enforcement bias' of the Convention." *Geotech Lizenz*, 697 F. Supp. at 1254 (citing *Parsons & Whittemore Overseas Co. v. Societe Generale de*

(footnote continued)
of an arbitral award may … be refused if the competent authority of the country where recognition and enforcement is sought finds that: … (b) The recognition or enforcement of the award would be contrary to the public policy of that country." (Convention Art V § (2)(b).)

L'Industrie du Papier (RAKTA), 508 F.2d 969, 973 (2d Cir.1974)).

IV. Analysis

The Court has reviewed, among other things, the "Notice of Motion to Confirm Arbitral Award and for Entry of Judgment" and "Petitioner's Memorandum of Law in Support of Its Motion to Confirm Arbitral Award and for Entry of Judgment," dated February 13, 2003, as well as the "Declaration of Fred G. Bennett in Support of the Motion to Confirm Arbitral Award and for Entry of Judgment," dated February 11, 2003; "Aeroflot's Memorandum of Law in Opposition to the Petition and Motion of MGM Productions Group, Inc. to Confirm the Arbitral Award and for Entry of Judgment," "Appendix of Authorities," and "Declaration of Carl Micarelli in Opposition to the Petition and to Petitioner's Motion to Confirm the Arbitral Award and for Entry of Judgment," dated March 12, 2003; Petitioner's "Reply Memorandum of Law in Support of Petition and Motion of MGM Productions Group, Inc. to Confirm Arbitral Award and for Entry of Judgment" and "Per Runeland's First Affidavit," dated March 26, 2003, as well as "Declaration of Craig Saroudi," dated March 25, 2003; Aeroflot's surreply letter, dated April 14, 2003; and Petitioner's letter in response to Aeroflot's surreply letter, dated April 17, 2003. The Court heard argument on May 13, 2003.

The Convention, which the United States ratified in 1970, applies to petitions to confirm foreign arbitral awards. (Convention Art. I ("This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought.").) There is no basis not to confirm the Award.

The parties dedicate a substantial portion of their submissions to whether the Agreement violates the Executive Orders and the OFAC Regulations. For example, Aeroflot argues that "the arbitrators' award seeks to compensate Russo for acts that violate laws forbidding Americans from engaging in transactions relating to Iran, and to impose liability on Aeroflot for not enabling Russo to engage in further illegal acts." (Resp. Br. at 1, 5-6 ("'United States persons' such as Russo are forbidden by federal law to participate in or facilitate such Iranian transactions.").) MGM counters that the Executive Orders and OFAC Regulations do not apply here. (*See, e.g.*, Pet'r Br. at 3 ("Russo's services were performed on behalf of ... Aeroflot only and ... Aeroflot—not Russo—negotiated the Iran Air lease and other leases for Russian aircraft."), 15 ("By its express terms, the Agreement required Petitioner to provide consultation services *to Aeroflot.*").)

The Court agrees with the arbitral panel that the Agreement does not violate the Executive Orders and OFAC Regulations. (*See* Award at 41-43 (concluding that the Agreement "can not be regarded as null and void" based on "the U.S. Regulations on Iranian Transactions" and that "Russo's consulting responsibilities ran only to Aeroflot and not to any entity in Iran.").) Assuming arguendo that the Agreement did violate the Executive Orders and OFAC Regulations, Aeroflot has not convinced the Court that the public policy defense supports its cause.[6] The public policy defense to enforcement of an arbitral award applies only

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[6] The party asserting that one of the exceptions applies has the burden of establishing it. *See Europcar Italia, S.p.A. v. Maillano Tours, Inc.*, 156 F.3d 310, 313 (2d Cir.1998); *Henry v. Murphy*, M-82, 2002 WL 24307, at *3 (S.D.N.Y. Jan.8, 2002).

where enforcement would violate the forum state's "most basic notions of morality and justice." *Europcar Italia, S.p.A. v. Maillano Tours, Inc.*, 156 F.3d 310, 313 (2d Cir.1998). That is not the case here. The United States Court of Appeals for the Second Circuit has held that a violation of United States foreign policy does not contravene public policy as contemplated in Article V of the Convention. *Parsons & Whittemore Overseas Co. v. Societe Generale de L'Industrialie du Papier (RAKTA)*, 508 F.2d 969, 974 (2d Cir.1974) ("In equating 'national' policy with United States 'public' policy, the [party seeking to overturn confirmation] quite plainly misses the mark. To read the public policy defense as a parochial device protective of national political interests would seriously undermine the Convention's utility. This provision was not meant to enshrine the vagaries of international politics under the rubric of 'public policy.' Rather, a circumscribed public policy doctrine was contemplated by the Convention's framers and every indication is that the United States, in acceding to the Convention, meant to subscribe to this supranational emphasis."); *see Nat'l Oil Corp. v. Sun Oil Co.*, 733 F. Supp. 800, 819 (D.Del.1990) (stating that "'public policy' and 'foreign policy' are not synonymous"); *see also Belship Navigation, Inc. v. Sealift, Inc.*, 95 Civ. 2748, 1995 WL 447656, at *6 (S.D.N.Y. July 28, 1995) ("'Public policy' and 'national policy' are not synonymous."); *Antco Shipping Co. v. Sidermar, S.p.A.*, 417 F. Supp. 207, 215- 16 (S.D.N.Y.1976) (declining to equate national policy with public policy).

Public policy arguments, such as those presented here, should be accepted with caution, so as not to discourage enforcement of United States arbitration awards by courts of other countries. *Sarhank Group v. Oracle Corp.*, 01 Civ. 1285, 2002 WL 31268635, at *6 n. 6 (S.D.N.Y. Oct.9, 2002) ("[C]onsiderations of reciprocity expressly recognized in the

Convention counsel courts to invoke the public policy defense with caution lest foreign courts frequently accept it as a defense to enforcement of arbitral awards rendered in the United States."); *Coutinho Caro & Co. v. Marcus Trading, Inc.*, Nos. 3:95CV2362, 3:96CV2218, 3:96CV2219, 2000 WL 435566, at *12 (D. Conn. Mar. 14, 2000) (same). Here, Aeroflot unconvincingly alleges that the Agreement violates the United States's foreign policy respecting Iran. It has not persuaded the Court that the Agreement violates our country's "most basic notions of morality and justice." *Europcar Italia,* 156 F.3d at 313; *Waterside Ocean Navigation Co. v. Int'l Navigation Ltd.*, 737 F.2d 150, 152 (2d Cir.1984). Consequently, the Court confirms the Award.

Aeroflot also argues that this Court should stay this proceeding under Article VI of the Convention and await the appellate decision from the Svea Hovrätt (Court of Appeal) in Sweden. (*See* Convention Art. VI (permitting a court to "adjourn the decision on the enforcement of the award" where "an application for the setting aside or suspension of the award has been made to a competent authority").) Aeroflot contends that the Court "'may be acting improvidently by enforcing the award prior to the completion of the foreign proceedings.'" (Resp. Br. at 23 (quoting *Europcar Italia,* 156 F.3d at 317).)

Aeroflot has not persuaded the Court that a stay is appropriate. "[A] district court should not automatically stay enforcement proceedings on the ground that parallel proceedings are pending in the originating country." *Nedagro B.V. v. Zao Konversbank,* 02 Civ. 3946, 2003 WL 151997, at *6 (S.D.N.Y. Jan.21, 2003); *see also Europcar Italia,* 156 F.3d at 313. In *Europcar Italia,* the Court of Appeals for the Second Circuit stated that "[a] stay of confirmation should not be lightly granted lest it encourage abusive tactics by the

party that lost in arbitration" and set forth a list of factors a court should consider on a motion to stay. *Id.* at 317-18.[7]

Aeroflot has not demonstrated that these factors weigh in favor of granting a stay. Quite the contrary. Confirmation, not a stay, advances the general objective of "expeditious

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[7] A court considers:

> (1) the general objectives of arbitration—the expeditious resolution of disputes and the avoidance of protracted and expensive litigation;
>
> (2) the status of the foreign proceedings and the estimated time for those proceedings to be resolved;
>
> (3) whether the award sought to be enforced will receive greater scrutiny in the foreign proceedings under a less deferential standard of review;
>
> (4) the characteristics of the foreign proceedings including (i) whether they were brought to enforce an award (which would tend to weigh in favor of a stay) or to set the award aside (which would tend to weigh in favor of enforcement); (ii) whether they were initiated before the underlying enforcement proceeding so as to raise concerns of international comity; (iii) whether they were initiated by the party now seeking to enforce the award in federal court; and (iv) whether they were initiated under circumstances indicating an intent to hinder or delay resolution of the dispute;
>
> (5) a balance of the possible hardships to each of the parties, keeping in mind that if enforcement is postponed under Article VI of the Convention, the party seeking enforcement may receive 'suitable security' and that, under Article V of the Convention, an award should not be enforced if it is set aside or suspended in the originating country; and
>
> (6) any other circumstances that could tend to shift the balance in favor of or against adjournment.
>
> ...
>
> **[T]he first and second factors on the list should weigh more heavily in the district court's decision.**

Europcar Italia, 156 F.3d at 317-18 (citation omitted).

resolution of disputes." *Id.* at 317; *see also Sarhank Group v. Oracle Corp.*, 01 Civ. 1285, 2002 WL 31268635, at *3 (S.D.N.Y. Oct.9, 2002) ("The adjournment of enforcement proceedings impedes the goals of arbitration, i.e., the expeditious resolution of disputes."). Aeroflot's Swedish appeal seeks a broad review of the interpretation of the Agreement—issues the arbitration panel presumably already considered—and promises to delay the finality of the arbitration, which Russo commenced in 1998, even further. (*See* Per Runeland's First Aff. ¶ 8, at 3.) In addition, the Swedish appeal has only just begun. As Aeroflot points out, "Russo and MGM have yet to file responses [to Aeroflot's appellate petition]." (Resp. Br. at 4.) Aeroflot alleges—with an unexplained cite to the *Europcar Italia* opinion—that "the foreign proceedings can be expected to proceed expeditiously." (Resp. Br. at 24.)

Also, the Swedish appeal was not brought to confirm the Award. Aeroflot brought the appeal to set aside the Award, and did so only after MGM petitioned this Court to confirm. *Sarhank Group,* 2002 WL 31268635, at *3 ("The fact that the pending foreign appeal seeks to set aside, not enforce, the award weighs in favor of enforcement in spite of the parallel proceedings ongoing in the originating country.").

The Court also believes that the balance of the hardships of a stay is greater on MGM, assignee of Russo, the party that provided services without receiving payment, than upon Aeroflot, the party that received services without paying for them. *See Europcar Italia,* 156 F.3d at 318; (*see also* Decl. of Craig Saroudi ¶ 2, at 1 ("MGM ... ha[s] been deprived of millions of dollars owed under the Consultation Agreement for years. As a result ... [MGM] is hampered in its financial ability to carry on meaningful business operation.").)

At oral argument, counsel for MGM delivered to the Court a copy of the May 9, 2003 decision of the Svea Hovrätt (Court of Appeal) in Stockholm, Sweden that denied Aeroflot's request to stay enforcement of the Award in Sweden pending the outcome of the appeal. (*See* Pet'r Letter to the Court attaching May 9, 2003 decision of the Svea Hovrätt (Court of Appeal) in Sweden, dated May 13, 2003, attachment at 2 ("The Court of Appeal rejects Aeroflot's application for a stay of execution.").) On May 14, 2003, counsel for Aeroflot informed the Court that Aeroflot "has no further comments on the ... decision of the Svea Court of Appeal." (Resp. Letter to the Court, dated May 14, 2003.) The May 9, 2003 determination by the Svea Hovrätt only strengthens this Court's conclusion that a stay is unwarranted here.

V. Conclusion

For the reasons stated, the Court confirms the Award and denies Respondent's motion to stay the proceeding. The Court respectfully requests that the Clerk close this case.

Dated: New York, New York
May 14, 2003

s/ RMB
RICHARD M. BERMAN, U.S.D.J.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse,
40 Foley Square, New York 10007,
Roseann B. MacKechnie, Clerk

No. 03-7561
[Filed and entered April 28, 2004]

MGM Productions

v.

Aeroflot

A petition for panel rehearing and a petition for rehearing en banc having been filed herein by the appellant Aeroflot.

Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is **DENIED.**

It is further noted that the petition for rehearing en banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

For the Court,

Roseann B. MacKechnie, Clerk

By: s/ Arthur Heller
Arthur M. Heller
Motions Staff Attorney

STATUTES AND REGULATIONS

IRANIAN TRANSACTIONS REGULATIONS AS ADOPTED EFFECTIVE 1995 (EXCERPTS)

* * *

31 C.F.R. § 560.206. Prohibited transactions related to Iranian-origin goods or services.

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, any transaction, including purchase, sale, transportation, swap, financing, or brokering transactions, by a United States person relating to goods or services of Iranian origin or owned or controlled by the Government of Iran is prohibited.

* * *

IRANIAN TRANSACTIONS REGULATIONS AS AMENDED EFFECTIVE 1997 (EXCERPTS)

* * *

31 C.F.R. § 560.206. Prohibited trade-related transactions with Iran; goods, technology, or services.

(a) Except as otherwise authorized pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, no United States person, wherever located, may engage in any transaction or dealing in or related to:

(1) Goods or services of Iranian origin or owned or controlled by the Government of Iran; or

(2) Goods, technology, or services for exportation, reexportation, sale or supply, directly or indirectly, to Iran or the Government of Iran.

(b) For purposes of paragraph (a) of this section, the term *transaction or dealing* includes but is not limited to purchasing, selling, transporting, swapping, brokering, approving, financing, facilitating, or guaranteeing.

* * *

31 C.F.R. § 560.208. Prohibited facilitation by United States persons of transactions by foreign persons.

Except as otherwise authorized pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, no United States person, wherever located, may approve, finance, facilitate, or guarantee any transaction by a foreign person where the transaction by that foreign person would be prohibited by this part if performed by a United States person or within the United States.

* * *

INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT § 206.

50 U.S.C. § 1705. Penalties.

(a) A civil penalty of not to exceed $10,000 may be imposed on any person who violates, or attempts to violate, any license, order, or regulation issued under this chapter.

(b) Whoever willfully violates, or willfully attempts to violate, any license, order, or regulation issued under this chapter shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE

* * *

FINAL AWARD
[Excerpts]

rendered in Stockholm on November 29, 2002

Case no: 091/1998

CLAIMANT :

Russo International Venture, Inc., 163 Third Avenue #339, New York, N.Y. 10003, U.S.A.

* * *

RESPONDENTS :

1. Aeroflot Russian International Airlines, 37 korp. 9, Leningradsky prospect, Moscow, 125167, Russian Federation

2. Center of International Accounts of Aeroflot, same address

* * *

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* * *

FACTUAL BACKGROUND

In June 1992 the American company Russo International Management, Inc. and the International Commercial Department of Civil Aviation of Russia–"Aeroflot Soviet Airlines" signed an agreement concerning leasing of commercial aircraft called "Consultation Agreement". In an amendment to the Consultation Agreement, the parties agreed that, as from September 25, 1992, Russo International Venture Inc. was

assigned as successor to Russo International Management, Inc. It is undisputed that Aeroflot–Soviet Airlines is the predecessor-in-interest to Aeroflot Russian International Airlines.

The Consultation Agreement reads as follows:

> This Agreement, made and entered into effect on the day of June 1992, between International Commercial Department of Civil Aviation "Aeroflot–Soviet Airlines" registered in the city of Moscow, Russian Federation, hereinafter called the "Supplier" and Russo International Management, Inc., a corporation incorporated in the State of New York, USA, hereinafter called the "Consultant", for the leasing of any commercial aircraft, (excluding helicopters), commercial aircraft parts, along with related service, support and spare parts contracts to Iran Air, hereinafter called the "Purchaser". In consideration of the mutual covenants contained herein, the Supplier an the Consultant hereby agree as follows:
>
> 1(a). "Contract" shall mean execution of any contract or lease in the future between Supplier and Purchaser for any supply of commercial aircraft, commercial aircraft parts, maintenance, repair and other services agreed to between sand Parties.
>
> 1(b). The "Bank" shall mean such bank or financial institution acceptable to the Parties hereto as guarantor of payment to Consultant.

1(c). The Supplier guarantees, warrants and protects payment of the Consultant's compensation and fees and shall have the text of this Agreement endorsed by an international recognized bank, and the Supplier will establish an irrevocable, confirmed letter of credit in favor of Consultant or pay Consultant's fees by certified or bank check, or wire transfer at the times designated in Paragraph 5. The Consultant will participate in financial arrangements of the Contract in favor of the Supplier.

2. That the term of this Agreement shall commence on the date of execution of this Agreement and continue thereafter for a period of the time equal to the initial term of the Contract and any extension thereof. Supplier shall cooperate with Consultant and provide all documents reasonably requested by Consultant within fifteen (15) days of such request. No subsequent amendments or modifications to the Contract shall reduce the terms of this Agreement for the period of time during which the Consultant is entitled to receive compensation.

3. That the Supplier retain the Consultant as consultant in an advisory capacity, only for the purpose of consulting with the Consultant concerning the Contract and acquiring any other consultation or advisory service from other sources shall not interfere with the terms of this Agreement.

4. Supplier shall consult with the Consultant at times reasonably requested and such consulta-

tions shall be performed at the places and times and manners that Consultant may from time to time select and/or designate. All costs of travels and accommodation shall be paid by the party requesting same.

5. That the compensation to be paid to the Consultant by the Supplier shall be five per centum (5%) of the amount paid for each commercial aircraft, and for support spare parts, purchased or leased during the term of this Agreement and extensions thereof, simultaneously with the payment of the proceeds of the letter of credit, or any pan thereof, to the Supplier. Such payments shall be made to the Consultant on the same terms and conditions as and when payments are made to the Supplier under the terms of the Contract acquired by the Purchaser with the stipulation that payment of each Consultant's fees shall be simultaneous with the collection of the proceeds of the letter of credit, or any part thereof, by the Supplier. The Bank, by endorsing the text of this Agreement, unconditionally guarantees timely payment of the Consultant's fees as specified herein in the Agreement. The Supplier hereby agrees and the Bank hereby confirms and guarantees to make an payments to the Consultant in the same convertable had currency that Iran Air pays for the Supplier (US Dollars, Japanese Yen, UK Pounds, German Deutschemark, Swiss Francs, French Francs, Italian Lira). The Bank also confirms and guarantees that all such payments are transferrable to the account of the Consultant. The banks and accounts to receive

the Consultant's fees will designated by the Consultant not later than the time of the transfers.

6. That no Parry hereto shall be liable, responsible or accountable of any representations made in good faith by said Party.

7. That the Contract is executed and during the execution and the term thereof the Consultant shall be Consultant to the Supplier in connection with any Contract relating to Iran Air or aircraft (but excluding helicopters) in Iran.

8. That no merger, consolidation and/or other representation of the Supplier or Purchaser creating a new entity shall affect the duties and obligations of either Party pursuant to the terms and provision of this Agreement, including but not limited to the payment of compensation to the Consultant, and the guarantee of the said payment.

9. That this Agreement shall be binding upon and inure to the benefits of both the Supplier and the Consultant and their heirs, personal representatives, successors and assignees; provided, however, that this agreement may not be assigned, except as otherwise herein provided, by either Consultant or Supplier without the prior written consent of the other Party.

10. That all notices to be given pursuant to the terms and conditions of this Agreement shall be in writing and shall be served by personal service of registered mail., to the Supplier or to the Con-

sultant and the addresses set forth immediately after the signatures to this Agreement. The date of service if mailed shall be the date of receipt Either Party may designate a new address by written notice to the other.

11. That if the Contract is executed, the Supplier shall deliver to the Consultant a photocopy of such articles of the Contract required by the Consultant and approved by the Supplier within five days after the signing, i.e. execution of the Contract.

12. This commitment shall be confirming guarantee and shall remain valid and effectual and irrevocable during the entire term of the Contract for so long as it shall last irrespective of whatever changes in price or the terms and conditions thereof are made during the term of the Contract and any extensions thereof.

13. Upon the execution of this Agreement and/or after the completion of any Contract, the Supplier will not enter into any agreement with any party other than Consultant with respect to leasing commercial aircraft (but excluding helicopters) to Iran Air or for use in Iran.

14. In the event of any unresolved disputes, such agreement shall be submitted to a board of arbitration in accordance to the rules and regulations of the International Institute of Arbitration. Such arbitration shall be conducted in Stockholm, Sweden. All documentation shall be in the English language.

15. This Agreement is governed by the regulations of the International Institute of Arbitration and shall be construed by the laws of Russian Federation and the State of New York (USA).

16. The dispositive language for the interpretation, execution, enforcement, arbitration, and any documentation related to the text, of this Agreement shall be the English language, in which language this Agreement has been drawn and made. In the event any dispute or disagreement between the translations and this present English text, the English language shall prevail.

17. This Agreement consists of seventeen (17) articles and three (3) sub-articles [Article l(a), 1(b) and 1(c)]. This Agreement may be executed in counterparts, any combination of which, if bearing original signatures, shall be considered a duly executed original.

In witness whereof, the Parties hereto have executed this Agreement as of this day of June 1992 in the city of New York.

The Consultation Agreement is signed by Russo International Management, Inc. as Consultant and by International Commercial Department of Civil Aviation of Russia as Supplier. The Consultation Agreement has also been signed by Center of International Accounts of Aeroflot.

* * *

STATEMENTS BY THE PARTIES

Russo:

* * *

While in Moscow, Mr. Soroudi [the president of Russo] provided services on a daily basis for Aeroflot, as requested, including counselling regarding (1) the need to obtain certificates of airworthiness and registration for Civil Aviation of Iran; (2) how to arrange for payment of transport of planes from Russia to Iran; and (3) how to set up letters of credit to facilitate international payments.

* * *

Throughout 1993 and 1994, Russo provided consultation services as requested by Aeroflot, including, among other things, assisting with negotiations and drafting of each protocol and amendment to the Iran Air contract. In addition, Russo assisted Aeroflot with collections and banking transaction issues related to the lease with Iran Air.

* * *

In early 1995, Aeroflot began to fall behind in its payments of Russo's commissions. Russo inquired about the delay and was repeatedly assured that the payments would be forthcoming. Russo continued to provide consultation services for Aeroflot, as requested, through 1995 and 1996.

The last payment Russo received from Aeroflot was August 19, 1996. * * *

* * *

Aeroflot:

* * *

* * * [T]he Consultation Agreement falls under the provisions of the Iranian Transactions Regulations, was concluded in violation thereof, and was null and void.

* * *

Russo has failed to provide any proof that consulting services under the Consultation Agreement have ever been provided by Russo to Aeroflot and have ever been explicitly accepted by Aeroflot for the purpose of the Consultation Agreement. Aeroflot denies that such services were ever provided. * * *

* * *

REASONS FOR THE AWARD

* * *

2. Is the Consultation Agreement Null and Void because of the US Regulations on Iranian Transactions?

2.1 Provisions Referred to by Aeroflot.

In support of its assertation that the Consultation Agreement is null and void, Aeroflot has referred to (i) Executive Order 12613 issued by President Reagan, (ii) Executive Order 12957 issued by President Clinton and (iii) Executive Order 12959 which was also issued by President Clinton and by which some of the provisions of Order 12957 were revised. Executive Order 12959 was incorporated into the Iranian Transactions Regulations, 31 CFR 560. Among the sections of the said Regulations, Aeroflot has, in particular, pointed at Sections 560.206, 560.410 and 560.515.

In Section 1 of Executive Order 12613 it is stated that, except as otherwise provided in regulations issued pursuant

to this Order, no goods or services of Iranian origin may be imported into the United States after the effective date of the Order. According to Section 3, the Order took effect on October 29, 1987.

Section 560.206 of the Iranian Transaction Regulations stipulates that any transaction, including purchase, sale, transportation, swap, financing, or brokering transactions, by a United States person relating to goods and services of Iranian origin or owned or controlled by the Government of Iran is prohibited.

Section 560.410(a) prohibits the exportation of services from the United States that are performed on behalf of a person in Iran or the Government of Iran or where the benefit of such services is otherwise received in Iran, if such services are performed (1) in the United States, or (2) outside the United States by an individual United States person ordinarily resident in the United States, or (3) outside the United States by an overseas branch of an entity located in the United States. Section 560.410(b) states that the benefit of services performed anywhere in the world on behalf of the Government of Iran is presumed to be received in Iran.

Section 560.515 provides a 30 day grace period to complete performance of trade contracts entered into prior to May 7, 1995, and involving Iran. Sub-section (a)(2) states, *inter alia*, that if the pre-existing trade contract is for the exportation of services from the United States and benefitting a person in Iran or the Government of Iran, all obligations under the pre-existing trade contract must be fully completed prior to 12:01 a.m. EDT, June 6, 1995.

2.2 The Tribunal's Opinion

The Tribunal notes initially that the goods that were the subject of the Consultation Agreement were Russian aircraft

leased by Aeroflot to Iran Air (and, according to Russo, also to other Iranian airlines). Thus, the goods did not originate in Iran, nor were they imported into the United States. The same goes for such services as were covered by the Consultation Agreement.

In view of what has now been said, the Tribunal finds that the Consultation Agreement did not violate Executive Order 12613.

When it comes to Section 560.206 of the Iranian Transaction Regulations, it has a wide scope of application. Thus, it covers not only the specific types of transactions listed in the Section but "any transaction". Further, the Section does not require that the transaction is concluded between a US person and an Iranian entity. Thus, the fact that the Consultation Agreement was concluded between Russo and Aeroflot and that, under the terms of the Agreement, Russo was to serve only as consultant and not as a buyer or seller etc. does not exclude the application of Section 560.206.

On the other hand, the said Section only applies to transactions relating to "goods or services of Iranian origin or owned or controlled by the Government of Iran". It follows from the Consultation Agreement that Russo's duties ran solely to Aeroflot and dealt only with the leasing of Russian aircraft. Thus, in the Tribunal's opinion, the transactions in which Russo was engaged can not be regarded as related to goods or services originated in Iran or owned or controlled by the Iranian Government.

Accordingly, in the Tribunal's opinion, there is no conflict between the Consultation Agreement and Section 560.206.

With respect to Section 560.410 of the Iranian Transaction Regulations it is clear that, under the Consultation

Agreement, Russo did not perform services on behalf of a person in Iran or the Government of Iran. It should. further. be noted that Russo's consulting responsibilities ran only to Aeroflot and not to any entity in Iran. Accordingly, the benefits arising out of Russo's consulting activities accrued to Aeroflot. Thus, even though Aeroflot's customers—the Iranian airlines—may indirectly have benefitted from the advice given to Aeroflot by Russo, that does not, in the Tribunal's opinion, make Section 560.410 applicable.

Accordingly, the Consultation Agreement did not violate the said Section.

Since neither Section 560.206 nor Section 560.410 is applicable, there is no need to dwell on the provisions concerning a grace period in Section 560.515.

To conclude, the Tribunal finds that the Consultation Agreement can not be regarded as null and void on the ground now discussed.

3. Is Russo Not Entitled to Compensation because of Failure to Provide Consulting Services?

* * *

3.4 Evidence Invoked by Russo

* * *

Mr. Soroudi, in his affidavit, has stated, *inter alia*:

* * * While in Moscow, he provided services on a daily basis for Aeroflot, including counselling regarding (1) the need to obtain certificates of air worthiness and registration for Civil Aviation of Iran, (2) how to arrange for payment of transport of planes from Russia to Iran, and (3) how to set up letters of credit to facilitate international payments. He also assisted with negotiations and drafting of each protocol and

amendment to the Iran Air contract. * * * In 1995, Aeroflot moved its leasing operations to a daughter company called "Aeroflot Leasing Ltd". However, he understood his role to be unchanged and continued to provide services for Aeroflot. He did so through 1995 as well as 1996. — In November 1996, he attended a meeting in London with two representatives of Aeroflot to discuss the supply of additional aircraft to Iran. * * *

When heard before the Tribunal, Mr. Soroudi confirmed what was said in his written affidavit. He added, among other things: After having been asked by Aeroflot to move to Moscow, he remained there from August 1992 until the middle of 1996 and worked full time for Aeroflot. * * *

* * *

3.5 The Tribunal's Conclusions

* * *

With respect to the question whether Russo is barred from compensation under the Consultation Agreement since no consulting services were rendered, no problem seems to occur, provided that New York law is applicable. Russo has contended that, under New York law, Russo will be entitled to compensation whether consulting services were in fact rendered or not. The mere fact that Russo was prepared to provide consultation would be sufficient. This contention has not been questioned by Aeroflot.

If Russian law has to be applied, it seems clear that Russo is not barred from compensation in the case that services have been rendered and accepted. In such a case it does not seem to be of any importance whether the 1994 Civil Code or the preceding legislation is applicable. If no services have been provided by Russo, the situation is more doubtful.

After having made these statements the Tribunal will turn to the question whether Russo did fulfill its duties under the Consultation Agreement. In this context there is reason to state that, as consultant, Russo not only had to actually provide services but also to make itself available, i.e. to stand at all time ready, willing and able to perform Aeroflot's requests.

Russo's contention that services were in fact rendered is supported by the written affidavit and the oral testimony by Mr. Soroudi. He has given a detailed report on his activities after the Consultation Agreement had been signed and has mentioned several examples of the way he assisted Aeroflot. His allegation that he, upon Aeroflot's request, lived in Moscow for several years has not been contested by Aeroflot. The written evidence submitted also shows that he often went to Moscow. It must be assumed that, during his stay there, he was available and prepared to render such services as were requested by Aeroflot.

It should, further, be noted that Aeroflot has not objected to Russo's allegation that they never, before the arbitration was initiated, claimed that Russo had failed to provide services or to otherwise fulfill its duties. On the contrary, the letter dated November 10, 1994 from Aeroflot to City Bank in Moscow indicates that, during several years, Russo had been successfully cooperating.

Importance must also be attached to the fact that Aeroflot has paid substantial sums under the Consultation Agreement. As far as has been shown, the payments went on until August 1996.

The written evidence further indicates that, after that date, Aeroflot informed Russo of its intention to go on paying commission and pursue the parties' cooperation. And when Aeroflot, in February 1997, informed Russo that the validity

term of the Consultation Agreement had expired, Aeroflot never claimed that the termination was due to any breach of contract on the part of Russo.

In view of what has now been said, the Tribunal finds that Russo has not only stayed available but has also in fact provided services under the Consultation Agreement to such extent that its duties were fulfilled. Russo's services were also, as far as has been shown, accepted by Aeroflot.

Having stated this, the Tribunal does not need to go into the question whether Russian or New York law is applicable. Irrespective of which law shall apply, Russo is not barred from claiming compensation because of inactivity.

Thus, the objection on the part of Aeroflot which has now been discussed shall be rejected.

* * *

7. Has the Consultation Agreement been Terminated?

The written evidence submitted by the parties includes a letter, dated February 7, 1997, which was sent to Russo from Mr. A.S. Krasneker, Commercial Director of Aeroflot. In the letter reference is made to the May 1992 Contract. It is pointed out that this Contract terminated on June 30, 1995 and that all the commercial obligations between Aeroflot and Russo had been completely fulfilled. It is further stated that Aeroflot by the letter officially notified Russo that, in accordance with Article 2 of the Consultation Agreement, its validity term terminated on June 30, 1995, and that after the mentioned date the Agreement and the Amendment 1 to it were considered expired and not in force.

Aeroflot has alleged that, if the term of the Consultation Agreement is not deemed to have run out automatically, it was in any case terminated by the said letter.

The Tribunal notes, initially, that the letter is not formulated so as to contain an explicit and independent cancellation of the Consultation Agreement. Instead, the letter contains a reference to the May 1992 Contract and an interpretation of Article 2 of the Consultation Agreement and its consequences.

In the Tribunal's opinion, Aeroflot's interpretation is incorrect. In the previous Section, the Tribunal has concluded that, besides the May 1992 Contract, even other leasing contracts which were concluded "in the future" might be covered by the Consultation Agreement, and that, as a consequence, the term of the Consultation Agreement did not automatically ran out at the same time as the term of the May 1992 Contract.

Thus, in view of the way the letter of February 7, 1997 was formulated, the Tribunal finds that the Consultation Agreement was not terminated by the letter.

It should, further, be noted that, as far as has been shown, the contacts between the parties went on even after February 7, 1997. Thus, in 1999 a meeting was held in Montreal with the participation of Mr. Ostroumov on behalf of Aeroflot. Mr. Soroudi and Mr. Scott, in their written affidavits, have stated that, at the meeting, Mr. Ostroumov suggested that the parties engage in a new business venture. This idea was rejected by Mr. Soroudi, who declared that he was only interested in modifying the existing Agreement. According to Mr. Soroudi, Mr. Ostroumov never said that the Consultation Agreement had been terminated or that Russo had breached the Agreement.

When heard before the Tribunal, Mr. Ostroumov has not objected to Mr. Soroudi's and Mr. Scott's statements.

When taking into account all the circumstances, the Tribunal concludes that the Consultation Agreement has not been terminated by Aeroflot, nor by Russo.

* * *

15. Russo's Request that the Consultation Agreement be Terminated.

* * *

15.2 The Tribunal's Conclusions.

As stated previously (Section 7), Aeroflot has alleged that, if the term of the Consultation Agreement is not deemed to have run out automatically, it was in any case terminated by a letter, dated February 7, 1997, which was sent to Russo from Mr. A.S. Krasneker, Commercial Director of Aeroflot. However. the Tribunal has found that the Agreement was not terminated by the said letter. Nor has the Agreement, for any other reason, ceased to be valid.

Russo's request that the Consultation Agreement should, by this award, be declared as terminated has been put forward for the first time in a submission from Russo, dated July 31, 2002, that is after the final hearing with the parties. The submission has been sent to Aeroflot, and Aeroflot has not made any objection.

The Tribunal finds that, failing any objection from Aeroflot, Russo's request shall be accepted. The award shall, thus, include a determination formulated in accordance with the said request.

* * *

THE AWARD

1. Aeroflot shall pay the following amounts to Russo:

(a) USD 12,000,000 as damages, based on Aeroflot's failure to pay commissions for the period up to January 2002,

(b) USD 1,000,000 as damages, based on Aeroflot's failure to pay commissions for the period from January 1, 2002 up to the date of this Award,

(c) USD 155,000 as damages, based on Aeroflot's failure to compensate Russo for travel and accommodation expenses,

(d) USD 3,726,937 as interest on the amounts under a-c.

2. The Tribunal declares that, as of the date of this Award, the Consultation Agreement is terminated, along with all continuing rights and obligations of the parties thereunder, except as necessary to produce enforcement of this Award in any appropriate jurisdiction(s). The parties are, without limitation, relieved from the exclusivity clause (Article 13) of the Consultation Agreement and are free to compete without restriction with each other for procurement of airline leases and related transactions as described in the Consultation Agreement within the territory of Iran.

3. The following claims are rejected:

(a) Russo's claim for punitive damages,

(b) Russo's claim for a determination that the guarantee under the Consultation Agreement is enforceable.

4. Aeroflot shall compensate Russo for arbitration costs in an amount of USD 154,799.89.

5. Aeroflot's claim for compensation for arbitration costs is rejected.

6. The compensations to the arbitrators, the secretary and the Arbitration Institute of the Stockholm Chamber of Commerce are determined as follows:

(a) for Justice Magnusson a fee of SEK 600,000,

(b) for Mr. Aksen a fee of SEK 400,000 and compensation for costs amounting to SEK 119,795,

(c) for Professor Kostin a fee of SEK 400,000 and compensation for costs amounting to SEK 43,044,

(d) for Mr. Sandesjö a fee of SEK 125,000 and compensation for costs amounting to SEK 35,064 and

(e) for the Arbitration Institute a fee of SEK 108,000.

7. The parties are jointly and severally liable for the payment of the compensations under 6. As between the parties, Aeroflot shall be obliged to pay SEK 873,177 to Russo.

8. Such part of the security for arbitration costs which remains when the compensations under 6 have been deducted shall be repaid by the Arbitration Institute to Russo.

* * *

s/ Staffan Magnusson
Staffan Magnusson

s/ Gerald Aksen
Gerald Aksen

s/ [illegible]
Alexei A. Kostin
dissenting opinion, attachment

* * *